

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. FRANCIS and DEPARTMENT OF THE NAVY,
U.S. MARINE CORPS, Cherry Point, NC

*Docket No. 03-1001; Submitted on the Record;
Issued August 27, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 26, 2000 appellant, a 54-year-old computer specialist, filed a claim for compensation alleging that he had developed a depressive disorder caused by factors of his federal employment. He alleged that his depressive disorder stemmed from traumatic experiences which occurred at the employing establishment in 1993, from which, he had not recovered and manifested itself as a major depression due to reminders associated with the duties of his existing position.¹ Appellant stopped work on April 18, 2000 and retired from federal employment effective January 13, 2001.

By decision dated October 26, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that it was not timely filed. In a decision dated September 17, 2001, an Office hearing representative found the claim to be timely filed, as appellant was not actually diagnosed with an emotional condition until 1999 and, therefore, he could not have been reasonably aware that he had undergone any psychological trauma until that point. The Office hearing representative, therefore, vacated the Office's October 26, 2000 decision and remanded the case for further development and the issuance of a *de novo* decision.

¹ The record reflects that, on August 5, 1993, appellant was placed on administrative leave and barred from the employing establishment's premises pending an investigation as to whether he had mismanaged government property and abused his authority of the supervisory position held at that time. On October 25, 1993 the employing establishment issued appellant a notice of proposed removal from employment. On December 13, 1993 the employing establishment demoted appellant to a lower grade position. Following an appeal to the Merit Systems Protection Board (MSPB), appellant and the employing establishment entered into a settlement agreement on March 25, 1994. As a result of the settlement agreement, appellant's demotion was set aside and he was retroactively returned to his former position with back pay. His former position was abolished prospectively and appellant accepted a lower grade position at the retained pay and grade of his former job. The agreement stipulated that the employing establishment admitted no wrongdoing.

By decision dated October 17, 2001, the Office denied appellant's claim for compensation on the grounds that it was not timely filed. The Office found that the evidence of record established that he was aware of the causal relationship between his employment and disabling condition by May 19, 1994 and that there was no other evidence of file to support a waiver for the time requirement for filing. By decision dated April 29, 2002, an Office hearing representative set aside the October 17, 2001 decision, again finding that the claim was timely filed. Accordingly, the claim was remanded to the Office for further development and adjudication on its merits.

By decision dated July 11, 2002, the Office denied appellant's claim on the grounds that he did not establish an injury in the performance of duty. By decision dated January 16, 2003, an Office hearing representative affirmed the July 11, 2002 decision. The instant appeal follows.

The Board finds that appellant had not established that he sustained an emotional condition in the performance of duty.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

In various statements, appellant generally described the events and circumstances which transpired in 1993. He contended that there had been no reasons for the employing establishment placing him on administrative leave, barring him from the premises or investigating him and that this period was very stressful. Appellant stated that, by the time the settlement agreement was reached, he had lost complete faith and trust in the employing establishment and that, when he returned to work at the employing establishment, he was very apprehensive, anxious and suspicious of everyone around him. He noted that he had filed a request for investigation against the officer who investigated him in 1993 and that, after he received a response to this request, he realized the entire investigation process was flawed and no accountability would be found.

Subsequent to his return to work, appellant worked as a computer specialist from July 1994 through May 1997. He alleged that he was improperly reassigned to another department. Appellant stated that he had never received any of the requested information regarding the proposed abolishment of his position, nor was he ever interviewed as to what his job assignments and duties would included. He stated that he was reassigned to the Marine Welfare and Recreation Department on an identical position description.

Appellant alleged that, during the late summer of 1999, he began to feel stress because he was required to be more involved with higher level management and was assigned additional duties, to attend management meetings and was asked to be responsible for the supervision of

² Donna Faye Cardwell, 41 ECAB 730 (1990).

personnel. He advised that it was during this time that he began to relive his stressful moments from the activities of 1993 through 1994.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁴ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁵

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁸ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

Administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ See *Lillian Cutler*, *supra* note 3

⁶ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁹ *Id.*

the employee.¹⁰ Where disability results from an employee's emotional reaction to certain administrative or personnel matters unrelated to the employee's regular or specially assigned workduties, the disability does not fall within coverage of the Act.¹¹ However, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³

The Board notes that the events appellant has alleged as occurring in 1993, were resolved with an MSPB settlement, which stipulated no fault.¹⁴ Although he has made allegations that the employing establishment erred and acted abusively regarding the investigation of 1993, he has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. Thus, he has not established a compensable employment factor under the Act in this respect. Although appellant's demotion was later rescinded by the MSPB, the settlement agreement specifically stated: "By entry into the Agreement, the Department of Defense, its officers, agents and/or employees, in no way admit[s] to any wrongdoing ... by the employing establishment" and appellant agrees that this agreement shall not be construed as an admission, nor wrongdoing, nor liability" by the employing establishment. The Board finds that there is no persuasive evidence that the employing establishment erred or acted abusively. The mere fact that personnel actions are later modified or rescinded, does not in and of itself, establish error or abuse.¹⁵

Regarding appellant's allegation that the 1993 investigation was conducted improperly on June 28, 1994 the employing establishment found insufficient cause to support appellant's allegations of dereliction of duty against the officer who had performed the investigation. An investigation into allegations of employee misconduct is an administrative function of the employer¹⁶ and absent evidence of error or abuse, an emotional reaction to an administrative action is considered self-generated and is not compensable. There is no evidence of error or abuse in the employer investigating appellant's complaints of the investigation officer in 1993 and appellant's allegations as to the propriety of the investigation against him and that the investigation officer committed criminal conduct are not compensable.

¹⁰ *Gregory N. Waite*, 46 ECAB 662 (1995).

¹¹ *Michael L. Malone*, 46 ECAB 957 (1995).

¹² *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹³ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁴ *See supra* note 1.

¹⁵ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁶ *See Patricia A. English*, 49 ECAB 113 (1997).

The record reflects that, although appellant continued to receive retained pay, the two-year period of his grade retention at the GM-14 level expired on June 19, 1996. This is an administrative matter for which appellant has not established error or abuse.

Appellant also was dissatisfied in the manner, in which the employing establishment was reorganized in 1997 and was concerned about the proposed abolishment of his position. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁷ Likewise, appellant's subsequent reaction to being reassigned does not constitute a compensable employment factor.¹⁸

Regarding his contention that he was assigned unauthorized supervisory duties, appellant's general allegation concerning this matter does not provide specific details or sufficient evidence. Appellant wrote that he began to feel the stress of those supervisory duties during the late summer of 1999, he has not provided any detailed descriptions of the nature or frequency of such duties. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegations that the employing establishment mishandled his compensation claims and he experienced frustration in connection with his workers' compensation claim, the Board has held that the processing of compensation claims bears no relation to his day-to-day or specially assigned duties¹⁹ and although the record reflects that appellant received letters from the employing establishment regarding his leave status and requesting medical documentation while he was off work in the fall of 2000, the Board finds that appellant's allegations that these events were stressful, relate to administrative or personnel matters for which he has not established that the employing establishment erred or acted abusively.²⁰

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition while in the performance of duty.²¹

¹⁷ See *Plante*, *supra* note 15.

¹⁸ See generally *Purvis Nettles*, 44 ECAB 623, 628 (1993).

¹⁹ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

²⁰ See *Janet I. Jones*, 47 ECAB 345 (1996).

²¹ Because appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

The decision of the Office of Workers' Compensation Programs dated January 16, 2003 is affirmed.

Dated, Washington, DC
August 27, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member